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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/575,633	05/22/2000	William B. Johnson		1491

7590                    05/19/2003

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[REDACTED] EXAMINER

LEVY, NEIL S

[REDACTED] ART UNIT      [REDACTED] PAPER NUMBER

1616

DATE MAILED: 05/19/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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EXAMINER
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12

DATE MAILED:

This is a communication from the examiner in charge of your application.  
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## OFFICE ACTION SUMMARY

- Responsive to communication(s) filed on 17/2/98
- This action is FINAL.
- Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

- Claim(s) 26 - 35 is/are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- Claim(s) 26 - 35 is/are allowed.
- Claim(s) \_\_\_\_\_ is/are rejected.
- Claims \_\_\_\_\_ is/are objected to.
- are subject to restriction or election requirement.

## Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapprove
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All  Some\*  None of the CERTIFIED copies of the priority documents have been received.
- received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

- Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- Notice of Reference Cited, PTO-892
- Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- Interview Summary, PTO-413
- Notice of Draftsperson's Patent Drawing Review, PTO-948
- Notice of Informal Patent Application, PTO-152

- SEE OFFICE ACTION ON THE FOLLOWING PAGES -

Receipt is acknowledged of CPA, amendment and supplemental amendments.

Applicant's arguments filed on 1/22/03 have been fully considered but they are not persuasive. Applicant's arguments are to the effect that the invention, as now sought protection for, claims a method not seen in the prior art, which excludes normally utilized insecticides carrying precautionary labeling. As such, the invention as claimed is argued to be environmentally compatible, safe, nontoxic and devoid of chemical, poisons, or other standard insecticide aerosols. It is recognized that the nontoxic and safe, terminology is intended not to apply to the insect pest – it is not clear that the terms otherwise apply to all higher animal, or plant species. It is argued the "consisting essentially of" excludes the toxic, unsafe, and/or environmentally unfriendly insecticides. Examiner finds the phrasing to only slightly convey exclusion, to the extent that other materials, besides the required, non specific surfactants, and, in dependent claims, thickeners (again, non specific – i.e. – a carbohydrate includes sugar, an oil kerosene) can not interfere with the debilitation – insecticides included with film forming surfactants would still meet the new claim Language. It is not clear to examiner where the specification provides definition for the objected to terminology. Applicants' arguments that the "consisting essentially of" obviates these issues is not seen as supporting incorporation of these concepts in reading the therefore now broader claim language. "Consisting of" would still permit of toxic surfactants, inclusive of such as sodium lauryl sulfate, in Kerosene (claim 28). Finally, note that the solution of

surfactant and (claim 27) water, does not exclude toxic propellants; the standard hydrocarbons propane, chloro-flourinated hydrocarbons. However, the methods as claimed do not permit anticipation, as argued by applicant, over the JP, Black or Dupuis references, of record, or of repellent methods.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 26-28, 32, 34, 35 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over MORITA - 5110594.

Here we find natural components, the instant non-toxic, environmentally compatible components, (food contact material – col. 1(2), Table and col. 2) as insecticides, with surfactants (col. 2, last paragraph) useful with other insecticides, preservatives, bactericides, etc, (col. 3, top) not harmful to animals and humans, an providing pleasant aroma. The compositions can be filled into a spray vessel for spraying (col. 4, embodiment 5). Solvents are used for the sell oil, such as oils, triglycerides, and liquid carriers can also include water. Although the "sprayed for use" comment is all that denotes the method, one can immediately envision the Morita composition application to a verminous insect pest in one's presence, such as a buzzing fly or mosquitoes, with use of the spray directed at the insect, and the instantly claimed enveloping blocking spiracles, and death following as a matter of course. Note that the sell flower extract itself contains surfactants limonene, terpinenes and terpens, linalool, nerylacetate for instance (Table, col. 1, 2).

Claims 26-28, 31-33 are rejected under 35 U.S.C. 102(e) as being anticipated by Mueninghoff et al 6068849.

Application of insecticidal compositions to insects is disclosed (col. 2, lines 22-26) using as insecticide, surfactants as pesticide concentrate and emulsifier (col. 2, line 32- line 2, col. 3) functioning to spread across the substrate. Therefore, when substrate includes insect, it spreads across the insect and would therefore do as the instant claim requires. Additional surfactant may be desirable (col. 3, paragraph. 2). See claim 15 – an aqueous solution of surfactant mix with insecticide is applied to a plant pest.

Calcium sources are envisioned – example 2, line 30, col. 7. The biocides do not interfere with the action of the surfactants.

Claims 26-28, 31, 33 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Dohara et al 5055299.

Aerosol insecticide compositions and excellent effect thereof is disclosed (col. 1,2), water, alcohol, surfactants, sodium are all incorporated. This invention avoids corrosion, of insecticide aerosols (col. 1, line 4 +). The purpose of such insecticides is to apply to the insect to kill them. See examples 7, 10, 15.

Claims 26-31, 34, 35 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Nelson et al 2,898,263.

See formula w, for the instant carrier as claimed; Aromatic and surfactant. See claims 16-18; insects are killed by spraying this stuff on them. Example 2 further discloses spraying insects is known. It would be obvious to spray them, when you feel, hear, see or otherwise sense them, as would be apparent to any one ever attacked by

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them, even though nowhere does Nelson state that you have to sense them, in order to spray. However, the test method does require one to see the results: count the knocked down or dead flees or cockroaches' addition of the AA oil, with surfactant, constitutes an oil emulsion thickener, then mixed in water (formula z, col. 8).

Claims 26, 27, 31, 32, 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Neal et al '94.

Insects were sprayed (p. 1601, col. 1) with sucrose esters (col. 2); surfactants-, they died. Safer soap, and combinations of surfactants, also killed insects (Tables 4 and 5). Detection means was sight.

Claims 26, 27, 29-31, 33, 34 are rejected under 35 U.S.C. 102(e) as being anticipated by Horst – 6,103,763.

Insects are killed by direct application of surfactant's – K and Na with surfactants was already known as insecticidal (col. 2) application is in water' with thickener – corn starch (col. 3, lines 56-65). Insects were sprayed when sensed (seen).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on (703) 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy/LR  
May 15, 2003



NEIL S. LEVY  
PRIMARY EXAMINER